

IN THE UNITED STATES DISTRICT COURT FOR  
THE WESTERN DISTRICT OF PENNSYLVANIA

Donald L. Moshier JR.

Plaintiff

v

UNITED STATES OF AMERICA et al;  
Defendants

CASE NO: 05-180-Erie

District Judge McLaughlin

Magistrate Judge Baxter

**FILED**

APR 29 2008

CLERK OF DISTRICT COURT  
WESTERN DISTRICT OF PENNSYLVANIA

"OBJECTION" MOTION TO MAGISTRATE JUDGE BAXTER'S  
RECOMMENDATION TO GRANT DEFENDANT'S SUMMARY JUDGMENT

I, Donald L. Moshier Jr. Plaintiff in this case, Has brought up several issues and facts proving to the courts that plaintiff does indeed has not only proved his claim of medical negligence, but also has proved deliberate indifference as well, However, Plaintiff being a layman and with limited knowledge of the law, and no funds for legal expert's or counsel, The United States Government has full advantage of this, in how it had plaintiff's Amended "BIVENS", dismissed for no other reason than that plaintiff did not complete his administrative remedy, even though plaintiff did answer all motions to the best of his knowledge, not knowing that plaintiff could have explained to the courts that he was in (SHU) Special housing unit, during all the time of his gall-bladder sickness, and that no staff at F.C.I. McKean would give

Plaintiff any administrative forms, and then plaintiff was transferred to U.S.P. Lewisburg. All prison records will surely document all this, which I'm very sure the United States Government had, or new of, so in light of all that information, the United States Government had plaintiff's "BIVEN'S", dismissed not by the magistrate Judge Baxter, who has handled this case from the start, "NO" the United States Government's attorney had plaintiff's "BIVEN", dismissed by district Judge McLaughlin, this shows bias in favor of the United States Government.

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2. The United States Government relies solely on their expert witness, why, because the United States Government don't want the court to look too close at plaintiff's rebuttal, because they don't want the court to see, that the United States Government is turning Federal civil suit into a State of Pennsylvania case, Would it become a New York State case law, any other State if plaintiff just so happened to be housed in some other State, "NO" I think not, Second, if the United States Government wants to rely on Pennsylvania State law, well is it not also Pennsylvania State law that all Physicians be licensed to Practice Medical, Well Dr Herbert Beam does not hold such a license, this is also why the United States Government, mainly relies on Dr Bussanich's declaration and their very well paid expert witness Barry Kisloff, and never once did the United States Government answer this question in plaintiff's rebuttal, but stayed right away from it. if plaintiff had the money to hire Mr. Barry Kisloff first would his opinion been in favor of plaintiff, another factor, the

United States Government played on, which is the fact they knew there was absolutely no way possible for the plaintiff to come up with an expert witness such as Barry Kisloff, for one the United States Government is aware that the plaintiff had no money to hire one like the United States Government did, and even if plaintiff could have paid for an expert witness, the United States Government was aware there would be no way for such a witness to get inside the prison, how would they know this, because they had tried to get the stenographer into the prison to do the deposition, again plaintiff shows favoritism towards the United States Government.

3. Plaintiff in his rebuttle on page, 5 shows that plaintiff was not given the proper dose's, as also states in plaintiff's Exhibit D.p.4. Pegylated interferon, which the United States Government tries to state that the expert information provided by plaintiff is incorrect, second plaintiff argues that the deliberate indifference, is based on the long delays for hepatitis C, treatment, which plaintiff was up front and truthfull with the non licensed Dr. Herbut Beam, that plaintiff may of had hepatitis C, for approximately 20 years, with this knowledge the medical staff including Dr. Beam still refused to start treatment or even do a liver biopsy, which should of been the first thing done knowing the years and the back ground of plaintiff's past, However, it was over a year later. instead all BOP medical staff rely on and focus on ALT and AST counts, if they where profesional medical licensed physicians or hematology. I'm sure they would

of known, there are other tests more important in measuring the health of the liver, as in plaintiff's expert witness, Exhibit D.P.2. which states massive liver injury is associated with marked increases in ALT; mild injury maybe associated with mild- or even- no increase in ALT. the correlation is strongest at earlier stages of hepatitis C. before the development of cirrhosis. However, once cirrhosis occurs, ALT levels may not be high; Therefore, "ALT is no longer a good indicator of further liver damage", with all these Expert facts that the United States Government and the courts, Just over looked, again a Expert witness does not necessarily have to be a living human, it can be in the form of legal documents, brochure's, and in this case, that is what plaintiff has for his Expert witness, or is, was able to rely upon.

4. Plaintiff has tried to obtain an attorney to represent him, he has even asked the courts for help, However it wasn't until APRIL 3. 2008 that plaintiff filed a motion for appointment of counsel, upon mailing this motion, it seems that the courts decided to grant the summary Judgment for the defendant's, on APRIL,9 2008. just 5 days after the filing of plaintiff's motion for counsel,

5. CONCLUSION,

in light of the issues and facts the plaintiff has brought up why the summary Judgment shouldn't be granted, Plaintiff now ask the court once again to appoint him counsel, who would have the ability to get plaintiff a human expert witness who can look into the prison records, Whom has expert knowledge of the law, its also very reasonable that this case should be brought to trial, so very important questions can be answered, actual Legal Documents can be brought out into the open also. The question of jurisdiction on this case, weather it's a Pennsylvania state law case, or it's a Federal civil lawsuite as plaintiff originally filed it. Plaintiff also would like to ask the court to bring plaintiff's Bivens amendment back, to show cause why out of (68) filed documents in this entire case. The District Judge Sean J. McLaughlin, handed only this one plaintiff finds this to be bias in favor of the U.S. Government, this alone should be grounds to bring plaintiff's amendement back and grant trial. Plaintiff prays that Magistrate Judge Susan Paradise Baxter grant plaintiff both a trial, and a appointed counsel.

Date April 14<sup>th</sup> 2008

Respectfully submitted

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